IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

APPEAL NO.795 OF 1998
IN
NOTICE OF MOTION NO.1570 OF 1997
IN
SUIT NO.1936 OF 1997

Marie Pais
Adult, Indian Inhabitant
residing at 3, Sarvothae
1st Floor, Danpade, Khare
Mumbai. ..Appellant.
(Orig. Plaintiff)

Vs.

1. Indian Tobacco Company Ltd.
A company incorporated under
provisions of Indian Companies Act,
having its registered Office at the
37, Chowringhee,
Calcutta.

2. Avinash Divakar Palekar,
Adult, Indian Inhabitant,
residing at Gokul Haven,
'J' wing, Flat No.702,
7th Floor, Thakur Complex,
Opp. Mahindra & Mahindra Ltd.,
Kandivali (East), Mumbai.

3. Sudha alias Ariuprita Avinash
Palekar, Adult, Indian Inhabitant,
residing at Gokul Haven,
'J' wing, Flat No.702,
7th Floor, Thakur Complex,
Opp. Mahindra & Mahindra Ltd.,

Kandivali (East), Mumbai.

4. Diwakar Janardhan Prabhu,
   Adult, Indian Inhabitant,
   residing at 3, Banatwala Chawl
   Mansion, Mala, Dr. Ambedkar
   Ganesh Gully, Lalbaugh,
   Mumbai 400 012.

5. Palimar Rajarao,
   Adult, Indian Inhabitant,
   residing at 4/E 702, Damodar
   Park, Lal Bahadur Shastri Marg,
   Ghatkopar,
   Mumbai 400 086.

6. Prabhakar Janardhan Prabhu,
   Adult, Indian Inhabitant,
   residing at Banatwala Chawl
   Mansion, Mala, Dr. Ambedkar
   Ganesh Gully, Lalbaugh,
   Mumbai 400 012.

7. Avis D'Souza

8. Leslie D' Souza,
   Both Adults, Indian Inhabitants,
   residing at 602, Belmot 37,
   Napeansea Road,
   Mumbai 400 006.

9. Krishna Malhotra,
   Adult, Indian Inhabitant,
   (Address not known)

10. Kunda Mayekar

11. Satish Mayekar,

Both Adults, Indian Inhabitants,
(Address not known)

12. B.K. Sachdeva

13. Sharda Sachdeva,
Both Adults, Indian Inhabitants,
residing at 5, dha 25 Jawahar
Nagar, Jaipur 302 004.

14. Government of Singapore Ltd.,
N.A. Custody services
Consultancy Business Centre,
Barolawala Mansion,
Annie Besant Road, Worli,
Mumbai 400 018.

15. Stock Holding Corporation
AIGGIG Mutual Fund
C/o Stock Holding Corporation
of India, 224, Mittal Court,
'B' Wing, 2nd Floor, Nariman
Point, Mumbai 400 002.

16. Shalini Panshikar,
Adult, Indian Inhabitant,
residing at C/203, State Bank
of India Staff Quarters,
Bhafofi Keer Marg,
Mahim (West), Mumbai 400 016.

17. Barclays De Zoete Goedd
A/C The Bombay Fund Ltd.,
C/o The Hongkong & Shanghai
Banking Corporation Ltd.,
Investment Department,
52/60 Mahatma Gandhi Road,
Post Box No.12 B,

Mumbai 400 023.

18. Unit Trust of India,
41 Merchant Chambers,
Sir Vithaldas Thackersey Marg,
New Marine Lines, ..Respondents.
Mumbai 400 020. (Orig. Defendants)

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Shri. Amit Shastri i/b Ms. Geeta Shastri for the Appellant.
None for the Respondents.

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CORAM: **R. M. S. KHANDEPARKAR, &**
DR. D.Y. CHANDRACHUD, JJ.

25th January, 2007.

ORAL JUDGMENT (Per DR. D.Y. CHANDRACHUD, J.) :

1. By the impugned order dated 29th July, 1998 the Learned Single Judge has confined the relief in the Notice of Motion directing the Court Receiver to return 100 shares to Defendant No.16 while directing the Receiver to retain the remaining 100 shares with him. The other reliefs sought in the Notice of Motion in respect of the balance 700 shares have been rejected.

2. The Learned Single Judge has observed that the Appellant who is the Original Plaintiff has failed to make out a

prima facie case of fraud. The particulars of fraud have not been sufficiently pleaded. The husband of the Plaintiff expired some time in April 1992. The case of the Plaintiff in paragraph 4 of the plaint is that some time in April 1992 Defendants 2 to 6 approached her after being introduced as financial consultants. The suit, it must be noted, has been instituted on 18th June, 1997 nearly five years thereafter. In these circumstances, the Learned Single Judge was, in our view, justified prima facie at the interlocutory stage in holding that the subsequent conduct of the Appellant in not lodging a complaint cannot be faulted. Even the FIR that was lodged by Capt. Sylva was on 15th February, 1994. In these circumstances, the interference of the Court in the interlocutory order of the Learned Single Judge is not warranted. The Appeal is dismissed.

(R. M. S. KHANDEPARKAR, J.)

(DR. D.Y. CHANDRACHUD, J.)